



JUSTICE ADMINISTRATION DEPARTMENT

HARRIS COUNTY, TEXAS

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Memorandum

To: Members of Commissioners Court
From: Jim Bethke, Director
Date: July 23, 2020
Subject: Model Use of Force Policy and Report Outline

Research Scope: On June 9, Commissioners Court approved a motion made by Commissioner Garcia to work with Harris County law enforcement agencies – Harris County Sheriff's Office, Constables' Offices, County Attorney's Office, District Attorney's Office, and the Fire Marshal– to develop a **model use-of-force policy** that would **include implicit bias training** and that such agencies, may adopt and work with such agencies to develop training budgets for the implementation of said policy. Commissioner Garcia also requested that JAD reach out to the Harris County Deputies' Organization and other Law Enforcement Agencies to learn about current efforts underway.

Purpose of Memo: This memo provides an update of where JAD is in assisting in the development and proper implementation of model use-of-force policies that would include implicit bias training. To comply with the request, JAD is exploring the following:

1. Approaches to addressing the use of force;
2. Approaches to the proper implementation of model use-of-force policies, training-related to implicit bias, de-escalation, duty to intervene policies; and
3. Report on current efforts underway by Harris County Law Enforcement Agencies.

Next Steps

- Follow up with the Harris County Sheriff's Office, Harris County Constables' Offices, Harris County Attorney's Office, District Attorney's Office, and the Fire Marshal to provide a summary of our research.
- Reach out to Law Enforcement Agencies to obtain feedback and gain perspective.
- Work with Harris County Sheriff's Office, Harris County Constables' Offices, Harris County Attorney's Office, District Attorney's Office, and the Fire Marshal to discuss the implementation of implicit bias training.

- Conduct interviews with relevant parties possessing valuable information on model use of force policies and implicit bias training.
- Compile research on best practices on the model use-of-force policies, training-related to implicit bias, de-escalation, and duty to intervene policies.
- Finalize a memo that will include recommendations.

Final Memo Outline

1. Origin of memo
2. Use of force model policies (depending on scenario/circumstance)
 - a. Use of force continuum
 - b. On-duty Conduct
 - c. Off-duty Conduct
 - d. Out-of-uniform officers
3. Components of an effective policy regarding the use of force
4. Trainings and other key policies for consideration
 - a. Implicit bias training
 - b. De-escalation Resources necessary for training, and
 - c. Duty to intervene policies
5. Recommended model policy on the use of force
6. Recommended strategies to measure effectively of the implementation of the proposed use of model policy and training.

Preliminary Findings

Local Efforts: JAD has begun to engage Harris County Law Enforcement agencies to determine efforts and plans to revise existing use-of-force policies and will be scheduling a meeting in the near future with the Harris County Deputies' Organization to coordinate efforts, collaborate where possible, and discuss a communication strategy moving forward.

The Constables are in Phase One of a three-step plan to implement an updated policy on the use of force. The current phase has the Constable's working together looking at National, Regional, and Local experts and suggested updates to put together use of force policy to submit for phase two and phase three. Ultimately, a uniquely diverse panel of individuals will provide feedback before final implementation. The Constables will submit the name of the Director of the Justice Administration Department to sit in a group that will help mold the final policy. The Harris County Sheriff's Office has also begun an extensive review and modification of its current use of force policy and working in close coordination with the County Attorney's Office.

Impact of Use of Force Policies: A study completed by Samuel Sinyangwe in 2016 on "Examining the Role of Use of Force Policies in Ending Police Violence" found that when law enforcement agencies implemented restrictive use of force policies significantly reduced law enforcement-involved killings. Some of these more restrictive policies include bans on chokeholds and strangleholds, required comprehensive use of force reporting, and exhaustion of all other de-escalation tactics before resorting to the use of escalation tactics, requirement of warning before shooting at an individual, following a use of force continuum, duty to intervene, and restrictions on shooting at moving vehicles. Although these are common-sense policies, "only 1 in 3 of American's largest police departments currently have four or more of these policies in place" (Sinyangwe, 2016, p. 4). Additionally, with at least four or more policies implemented by law enforcement agencies, communities had 38 percent less law-enforcement involved killings.

Purpose of Use-of-Force Policy

According to the National Institute of Justice (NIJ), the use of force policy is used to instruct officers how to "respond with a level of force appropriate to the situation at hand, acknowledging that the officer may move from one part of the continuum to another in a matter of second."

An example of a use-of-force continuum follows:

- **Officer Presence — No force is used. Considered the best way to resolve a situation.**
 - The mere presence of a law enforcement officer works to deter crime or diffuse a situation.
 - Officers' attitudes are professional and nonthreatening.
- **Verbalization — Force is not-physical.**
 - Officers issue calm, nonthreatening commands, such as "Let me see your identification and registration."
 - Officers may increase their volume and shorten commands in an attempt to gain compliance. Short commands might include "Stop," or "Don't move."
- **Empty-Hand Control — Officers use bodily force to gain control of a situation.**
 - *Soft technique.* Officers use grabs, holds, and joint locks to restrain an individual.
 - *Hard technique.* Officers use punches and kicks to restrain an individual.
- **Less-Lethal Methods — Officers use less-lethal technologies to gain control of a situation.**
 - *Blunt impact.* Officers may use a baton or projectile to immobilize a combative person.
 - *Chemical.* Officers may use chemical sprays or projectiles embedded with chemicals to restrain an individual (e.g., pepper spray).

- *Conducted Energy Devices (CEDs)*. Officers may use CEDs to immobilize an individual. CEDs discharge a high-voltage, low-amperage jolt of electricity at a distance.
- **Lethal Force — Officers use lethal weapons to gain control of a situation. It should only be used if a suspect poses a serious threat to the officer or another individual.**
 - Officers use deadly weapons such as firearms to stop an individual's actions

Findings from Campaign Zero: We The Protesters, an organization focused on limiting police violence in the United States, developed a public education campaign named Campaign Zero. The Campaign provides ten categories of policy changes law enforcement agencies must make to reduce police violence across their jurisdictions. These categories include:

1. ending broken windows policing,
2. implementing community oversight strategies,
3. limiting use-of-force by law enforcement,
4. independent investigation and prosecution,
5. community representation,
6. audio/visual evidence from the police, such as body cams,
7. proving training to law enforcement,
8. ending for-profit policing,
9. demilitarizing the police, and
10. development fair police union contracts (We The Protesters, 2020).

Campaign Zero evaluated 91 law enforcement agencies nationwide and found that accountability in policies set by law enforcement agencies for law enforcement officers to follow when it comes to using force is relatively low. For example, the Campaign reports that only 21 of the agencies evaluated have bans on chokeholds, and only 34 law enforcement agencies require de-escalation (Moon, 2016).

Although these policies may be in place, law enforcement officers still committed atrocities across the nation. For instance, the New York Police Department has banned chokeholds since 1993, but the murder of Eric Garner was a result of out-of-uniform law enforcement officers using a chokehold. When addressing policy, law enforcement agencies must take into account several aspects of policing, from on-duty to out-of-uniform, to off-duty, and the policy must be made clear to the public to strengthen relationships between law enforcement and the community.

In light of the need to strengthening these relationships, Campaign Zero identified eight policies in the 91 jurisdictions that restrict law enforcement's use of force that are significant in saving lives. These policies include the following:

1. Requiring that the officers use de-escalation tactics, similar to a policy in Seattle where a threat assessment is completed and officers must consider clear and cooperative communication, timing, reasonable distance, and shielding (Best, 2019).
2. The use of a force continuum model to guide how law enforcement officers should not immediately resort to physical or lethal force. As noted above, this continuum identified by the NIJ developed in 2009 has five levels: 1. officer presence, 2. verbalization, 3. empty-hand control, 4. less-lethal methods, and 5. lethal force.
3. Setting restrictions or bans on chokeholds and strangleholds.
4. Law enforcement officers must issue a verbal warning before deciding to use force on an individual.
5. Law enforcement officers are restricted from shooting at people in moving vehicles unless individuals in the vehicle pose a deadly physical threat.
6. Law enforcement Officers must exhaust all available options, from de-escalation to escalation, before resorting to deadly force.
7. Other law enforcement officers must intervene in a situation where officers may be using an unnecessary amount of force against an individual. This demonstrates accountability between law enforcement officers.
8. Setting a requirement of comprehensive reporting from law enforcement officers involved in the use of force incidents that describes the threat and use of force on an individual. This reporting must be completed to demonstrate transparency.

Featured Jurisdictions: Several jurisdictions across the country are strengthening their use-of-force policies and implementing practices meant to limit use-of-force. According to research provided by the County Judge's office, there are four jurisdictions worth featuring. These include Dallas, Austin, along with Travis County, Chicago, along with Cook County, and the City and County of Los Angeles. Each of these jurisdictions publishes annual reports on the use of force incidents, and each also has unique elements that hold law enforcement officers accountable to excessive use of force, including the release of videos, online dashboards, and law enforcement oversight boards.

Dallas: The city of Dallas produces annual "Response to Resistance" reports, which follows the Response Continuum. This continuum is similar to the Campaign Zero policy use of force continuum, measuring the chance of injury to the law enforcement officer and the individuals involved in an incident. The 2019 report developed by the Dallas Police Department addresses complaints received about inappropriate use of force incidents, firearm discharge incidents, demographic data regarding the use of force incidents, the number of individuals involved in each incident, defensive techniques used by law enforcement officers, and many more details demonstrating the handling of the use of force incidents in the Dallas area.

Additionally, Dallas uses the use of force complaints and reports to effectively implement policy and training. For example, in 2009, 147 excessive force complaints were filed against the Dallas Police Department, leading to required de-escalation training. Fast forward to 2016, and 85 percent less excessive force complaints were filed about law enforcement officers. Also, Dallas recently adopted a duty to intervene policy to prevent incidents of excessive force resulting in injuries and, in some cases, death (Slotkin, 2020). This policy is in response to the recent events of three law enforcement officers seen as complicit in allowing George Floyd's gruesome death at the hands of Derek Chauvin to occur.

Austin/Travis County: Similarly to Dallas, Austin also produces an annual "Response to Resistance" reports following the Response Continuum, as well as a "Racial Profiling Report," making this information available to the public. To address issues seen in these reports, and the Office of Police Oversight was established, which receives complaints on the use of force and provides policy recommendations. The Travis County District Attorney's Office has developed a Civil Rights Unit which receives these use of force reports, specifically officer-involved shootings. It engages with the activities in addressing these occurrences, including law enforcement agency briefings, investigations, and, when necessary, developing presentations for indictments.

Also, in response to these use of force complaints and reports, Austin Police Department is currently developing policy surrounding chokeholds and strangleholds, considered "less lethal force" and focusing on how their continuum can be reformed in a way which addresses indirect causes of an individual's death (Coronado, 2020).

Chicago/Cook County: Currently, Chicago and Cook County Police Department produce quarterly and annual reports on the use of force incidents. In terms of comprehensive reporting, these reports go to their accountability division to further investigate certain incidents with a 72-hour turnaround. Additionally, the Chicago Police Department is currently completing a policy review open to the public on the use of force. The policy review covers incidents involving firearm discharge, taser use, use of chemical substances, baton use, and canine use. Once the public comment period ends, revisions will be reviewed by the Civilian Office of Police Accountability, the Independent Monitoring Team, and the Office of the Attorney General.

Los Angeles: The Los Angeles Police Department also releases annual reports on the use of force incidents, although these reports do not specify whether the use of force investigations are open or closed and has a video release policy for critical incidents involving use of force. Additionally, Los Angeles followed the Campaign Zero format to implement eight policy reforms that restrict the use of force and hold law enforcement officers accountable in situations where the use of force is used or threatened.

Duty to Intervene Policies, Implicit Bias and De-Escalation Training

Officer Duty to Intervene Policies: This policy inherently instructs law enforcement to intervene when another officer is assaulting a member of the public. Currently, law enforcement leadership in "Dallas; Burlington, Vermont; Ithaca, New York, and Charlotte, North Carolina, have all recently announced that they'll implement so-called "duty to intervene" policies, which essentially guide officers toward pulling their colleagues off people they're assaulting. Additionally, Michigan Governor Gretchen Whitmer said "that she'd like to see the guideline enacted by all law enforcement agencies statewide" (Ockerman, 2020). These action steps follow the current murder of George Floyd by law enforcement officer Derek Chauvin where three of his partners did not step in as he used excessive force against an individual, although Minneapolis already had a duty to intervene policies in place.

Several jurisdictions already have a duty to intervene policies in place. For years, law enforcement agencies in New York and Florida have had policies that require other law enforcement officers to intervene in situations where excessive force is being used against an individual. DeKalb County Police Department recently implemented a duty to intervene policy similar to the one used by the Houston Police Department, which requires law enforcement officers to step into situations where their partners are using excessive force. Furthermore, they are required to report these incidents to their supervisors. The policy currently reads as "Any employee present and observing another employee using force that is beyond that which is reasonable under the circumstances shall, when in a position to do so, safely intercede to prevent the use of such force. Employees shall immediately report these observations to an on-duty supervisor" (Houston Police Department, 2015, p. 2).

Limitations of Duty to Intervene Policies: When excessive use of force occurs, law enforcement officers may not intervene in these situations due to the fear of being labeled as a "rat," according to Frank Straub, the Director of the Center for Mass Violence Response Studies at the Police Foundation. Officers must prioritize addressing acts of misconduct committed by their peers and see-through, bringing justice to individuals harmed in police violence. This way, officers law enforcement officers develop relationships where they hold each other accountable rather than being complicit in excessive use of force incidents.

In cases where law enforcement officers choose not to intervene in excessive use of force situations, they are complicit and could be held liable for their actions, in the case of Jones v. City of Hartford, a passenger in a vehicle, was taken from the car he was in, forcefully slammed to the ground and kicked by law enforcement officer Murtha multiple times under false pretenses as his two partners, Officers Nichols and Rodriguez simply watched. The court recognized that both law enforcement officers must be held accountable for not intervening and allowing for the situation to escalate, resulting in

serious injuries of the individual involved. It is necessary for law enforcement officers to assess the amount of force their peers use against other individuals and the threat that those individuals pose to multiple law enforcement officers in a situation.

Implicit Bias Training: Implicit bias training is necessary to increase awareness of the internalization of specific stereotypes attributed to specific groups of people. Implicit biases are not based solely on one's explicit racist or discriminatory feelings, but ones that are a product of unknowingly interacting with structures perpetuating covert racism. Some of the internalization of these stereotypes come from how law enforcement officers perceive people of a certain racial/ethnic backgrounds. Through the completion of implicit bias training, law enforcement officers will be able to make more well-informed and conscious decisions by recognizing their positionality as well as that of individuals involved in the situation. According to a handbook on policing practices released by the United States Commission on Civil Rights in November 2018, "Black people, especially Black men, are more often associated or quickly paired with being 'threatening'... regardless of the race or ethnicity of the person taking the [implicit bias] test" (U.S. Commission on Civil Rights, 2018, p. 103). A study by the Center for Policing Equity found that in 12 locations nationwide, Black people are nearly four times more likely to have force used on them than their white counterparts. Implicit biases do, in fact, lead to racial and ethnic disparities when it comes to the use of force incidents.

Additionally, a simulation developed by Plant and Peruche demonstrated "shoot-don't shoot" situations, and law enforcement officers unleashed lethal firepower against unarmed Black suspects more than unarmed white suspects. According to a study completed by John Wilson, Kurt Hugenberg, and Nicholas Rule, law enforcement officers stereotype Black people as "large" compared to white people that are similar size and also adultify Black children, perceiving them as dangerous and threats. These perceptions have led to false arrests and excessive use of force incidents, similar to an incident in McKinney, Texas, where a Black teenage girl was slammed to the ground by law enforcement officers at a pool party (Phillips, 2017). To stop the use of force incidents based on the bias from occurring, the embedding of Plant and Peruche's simulation has proved successful alongside other extensive training.

As recommended by the American Civil Liberties Union, a policy should be put in place banning law enforcement from profiling individuals based on their race, ethnicity, nationality, sexuality, gender, gender identity, or any other part of their identity for that matter (U.S. Commission on Civil Rights, 2018, p. 112). In addition to this policy, implicit bias tests and training should be completed to evaluate one's biases in an attempt to reduce and eventually eliminate biases before heading into the field. The efficacy of implicit bias training is still a topic needed to be further studied, but surveys show that law enforcement officers point out in written evaluations that implicit bias training has, in

fact, proved effective. In light of this, law enforcement also needs to develop measurements for the success and failure of implicit bias training programs.

Fair and Impartial Policing offers implicit bias training for recruit and patrol officers, supervisors, mid-managers, command, and surrounding communities. These trainings range from eight hours to three days which help law enforcement officers and the community 1. "understand that even well-intentioned people have biases," 2. recognize perceptions are impacted by implicit biases, 3. acknowledge "that fair and impartial policing leads to effective policing," and 4. utilize tools that help increase consciousness of biases and eliminate biased responses to situations (Fair and Impartial Policing, 2020). Their model is based on scientific research completed by social psychologists that study bias and prejudice to implement evidence-based policies around policing (Fridell et al.).

De-Escalation Training: De-escalation training focuses on promoting peaceful harm reduction tactics in officer-involved situations to keep from escalating situations to a point where physical force must be used to subdue individuals involved. These tactics may be used in a manner that advocates for the elimination of the option of using force as well as the physical well-being of both the law enforcement officer and the individual involved in the situation. One thing to note when using de-escalation tactics is that law enforcement officers must recognize that they must do everything in their power, without using force, to minimize feelings of threat that an individual may be feeling in these situations. This may mean concealment of weapons, sending in one law enforcement officer at a time into a situation, or other perceived threats. A 2017 study completed by Mapping Police Violence depicted that in 69 percent of cases where an individual was armed with a knife, law enforcement officers immediately resorted to using lethal force instead of exhausting all possible options of de-escalating (Mapping Police Violence, 2018). These types of situations not only further harm the individual, but also heighten the risk of law enforcement officers and other community members involved in these situations unnecessarily physically harmed.

According to the Seattle Police Department handbook updated in 2019, there are four main elements to de-escalation, utilized in a manner dependent upon the circumstances: 1. communication, 2. timing, 3. reasonable distance, and 4. shielding.

Communication encompasses using verbal persuasion instead of immediate threats and insults, throwing off an individual, clarity of instructions, verbal techniques that acknowledge and empathize with the individual's positionality.

Second, time is essential in giving enough space to determine a feasible solution to the situation at hand, whether that may involve doing whatever is necessary to limit dynamic movement, reducing instances of physical harm, and/or gathering outside resources such as a crisis intervention team, other law enforcement officers, or experts skilled in handling unique situations.

Third, distance, concerning time, allows for strategic handling of the situations, protecting law enforcement officers and individuals from further physical harm.

Lastly, shielding is a de-escalation tactic that refers to the use of cover to avoid physical harm from individuals. Cover can either be the use of barriers between an individual and the law enforcement officer or natural obstacles in the surrounding environment. In summation, this tactic also relates reasonably closely to time and distance, displaying that de-escalation is made up of measured tactics.

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